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10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

12 UNITED STATES OF AMERICA, )  
 ) 2:13-CR-00073-JCM-(CWH)  
13 Plaintiff, )  
 ) **GOVERNMENT'S SENTENCING**  
14 v. ) **MEMORANDUM**  
 )  
15 MICHAEL LOFTON, )  
 )  
16 Defendant. )

17 Plaintiff United States of America, by and through DANIEL G. BOGDEN, United  
18 States Attorney, Kimberly M. Frayn and Andrew W. Duncan, Assistant United States Attorneys, and  
19 Jonathan A. Ophardt, Trial Attorney for the United States Department of Justice, Organized Crime  
20 and Gang Section, files this Sentencing Memorandum.

21 **PROCEDURAL HISTORY**

22 On January 10, 2012, in case number 2:12-CR-0004-APD-GWF, a federal grand jury  
23 indicted defendant Michael Lofton and thirty-eight other members of the Carder.su criminal  
24 organization, charging them with Participating in the Conduct of the Affairs of an Enterprise through  
25 a Pattern of Racketeering Activity, in violation of Title 18, United States Code, Section 1962(c)  
26

(Count One), Conspiring to Participate in the Conduct of the Affairs of an Enterprise through a Pattern of Racketeering Activity, in violation of Section 1962(d) (Count Two), and violations of the identity theft and access device fraud statutes. On February 5, 2013, defendant Lofton was arrested for violating his pretrial release by committing new financial fraud crimes while residing in the halfway house. The defendant's release was revoked.

In the matter at hand, 2:13-CR-00073-JCM-(CWH), Defendant Lofton was subsequently charged with Conspiracy to Commit Bank Fraud and Aggravated Identity Theft. (2:13-CR-0073, doc. no. 1).

On January 23, 2014, defendant Lofton pleaded guilty to Participating in the Conduct of the Affairs of an Enterprise through a Pattern of Racketeering Activity, in violation of Title 18, United States Code, Section 1962(c) (Count One in case number 2:12-0004). On that same date, the defendant pleaded guilty to a superseding information charging him with one count of Aggravated Identity Theft in this case, number 2:13-0073.

On May 22, 2014, defendant Lofton was sentenced to a 63<sup>1</sup> month custodial term, restitution in the amount of \$50,575,123.45, and a three year term of supervision. (2:12-CR-0004 Doc. No. 745). Sentencing in this case, number 2:13-0073, is presently set for May 28, 2014.

### **FACTS**

Defendant Lofton was residing in the halfway house pending trial in the Carder.su RICO case. PSR ¶ 6. During that time defendant the committed additional identity theft and access device fraud to unlawfully obtain merchandise which he then intended to fence. PSR ¶ 7- 14.

### **SENTENCING GUIDELINE CALCULATION**

The Government has no objections to the United States Probation Office's PSR, except to

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<sup>1</sup> The parties have agreed to jointly recommend, as the statute requires, that the Court impose the mandatory 24-month custodial term in this case consecutive to the 63 month term imposed in the RICO case.

1 observe that the defendant's criminal history points should be increased to a total of 4 following his  
 2 RICO conviction, and he should be in criminal history category III. However, the PSR need not be  
 3 amended unless the Court requires because the parties have agreed that, pursuant to USSG § 2B1.6,  
 4 that the guideline sentence for a violation of 18 U.S.C. § 1028A is the term of imprisonment  
 5 required by statute. Chapters Three (Adjustments, including Acceptance of Responsibility) and  
 6 Four (Criminal History) do not apply. The term of imprisonment required by 18 U.S.C. § 1028A is  
 7 a twenty four (24) month term of imprisonment. (Doc. No. 22 at p. 6). Accordingly, the  
 8 Government asks that the Court impose the statutorily required 24-month custodial term, which  
 9 must be served consecutively to any other sentence imposed, including consecutively to the 63-  
 10 month sentenced imposed in the 2:12-CR-0004 RICO case. A 24-month term of imprisonment is  
 11 consistent with the parties' plea agreement. (Doc. No. 22 at p. 8).

13 The Government joins in the PSR's recommendation of a one year term of supervision for  
 14 Count Five. The Government also joins with the Probation Department in recommending the Special  
 15 Conditions set forth in the PSR at p. 20 – 21.

17 The Government respectfully requests that the Court order the defendant to pay restitution in  
 18 the amount of five hundred ninety three and ninety three cents (\$595.95), as specified in the PSR at  
 19 p. 16, and in Attachment A, which is attached hereto and incorporated by reference herein.

20 Respectfully Submitted,

21 DANIEL G. BOGDEN,  
 22 United States Attorney

23 DATE: May 23, 2014

24 /s / Kimberly M. Frayn  
 25 KIMBERLY M. FRAYN  
 26 ANDREW W. DUNCAN  
 Assistant United States Attorneys  
 JONATHAN A. OPHARDT  
 Trial Attorney  
 Department of Justice  
 Organized Crime and Gang Section

**Certificate of Service**

The undersigned counsel hereby certified that she served a copy of this document on defense counsel, via electronic service through the PACER system on May 19, 2014.

DATE: May 23, 2014

/s / Kimberly M. Frayn  
KIMBERLY M. FRAYN  
Assistant United States Attorney

# ATTACHMENT A

**U.S. v. MICHAEL LOFTON**  
**2:13-cr-00073-JCM-CWH**  
**Restitution List**

Sharif's Online Sales	\$593.93
1504 River Oaks Circle, Apt 118	
Wylie, Texas 75098	